

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Joint Application by BellSouth Corporation,
BellSouth Telecommunications Inc., and
BellSouth Long Distance, Inc. for Provision of
In-Region, InterLATA Services In Georgia and
Louisiana

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CC Docket No. 01-277

REPLY COMMENTS OF
ALLEGIANCE TELECOM OF GEORGIA, INC.

Mary C. Albert
Vice President, Regulatory and
Interconnection
Morton J. Posner
Regulatory Counsel
Allegiance Telecom, Inc.
1919 M Street, NW
Suite 420
Washington, DC 20036
(202) 464-1792
(202) 464-0762 (fax)

Counsel for Allegiance Telecom of
Georgia, Inc.

For the Respondent 012
FILE

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SUMMARY

Under the Telecommunication Act, and this Commission's rules and orders, Allegiance Telecom of Georgia, Inc. is entitled to rely on the cost savings it would achieve by BellSouth's timely conversion of its special access circuits to UNE pricing. BellSouth's brazen refusal to comply with the law disadvantages its competitors from enjoying the benefits of an open local exchange telecommunications market in Georgia. BellSouth cannot be considered in compliance with Checklist Item 2 while it persists in using its monopoly position to deny competitors their rights.

BellSouth's failure to comply with statutory restrictions on the use of customer proprietary network information demonstrates that it is not serious about competing fairly in Georgia. Its win back efforts have become increasingly more aggressive, and they begin as soon as BellSouth obtains the privileged information that a customer might be shopping for another provider. BellSouth's campaign of direct contact with Allegiance's customers, disparagement of Allegiance's services and reputation, and dissemination of misinformation constitute more than a pattern. Taken with the similar comments of other carriers, Allegiance's experience demonstrates that BellSouth's business practices preclude its compliance with Checklist Items 1 and 2. The Commission should deny BellSouth's Application for Section 271 authority in Georgia.

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**REPLY COMMENTS OF
ALLEGIANCE TELECOM OF GEORGIA, INC.**

Allegiance Telecom of Georgia, Inc. ("Allegiance"), hereby files its Reply Comments in opposition to the BellSouth companies' ("BellSouth") Application for Section 271 Authority for Georgia. BellSouth has not complied with its Section 271 obligations to provide unbundled network elements ("UNEs") on a non-discriminatory basis and at reasonable rates, terms and conditions. In addition, through improper contacts with Allegiance customers and prospective customers, and misleading and disparaging^{*} information, BellSouth has deprived Allegiance of the benefit of Checklist Items 1 and 2, provision of interconnection and UNEs. The Commission should reject BellSouth's Application.

**I. BELLSOUTH DOES NOT SATISFY CHECKLIST ITEM 2 DUE TO ITS
ABJECT REFUSAL TO CONVERT SPECIAL ACCESS INTEROFFICE
DEDICATED TRANSPORT FACILITIES TO UNE PRICING AS
REQUIRED**

BellSouth has not complied with Checklist Item 2 by virtue of its refusal to convert special access circuits to individual UNEs in compliance with the Act and the Commission's rules. Allegiance is a facilities-based competitive local exchange carrier that began providing service to end users in BellSouth territory in Atlanta, Georgia in

mid-1998. Since the time Allegiance entered this market, BellSouth has consistently frustrated Allegiance's attempts to obtain interoffice dedicated transport facilities at unbundled network element prices. BellSouth previously represented to Allegiance and to the Commission that it would convert Allegiance's existing special access circuits to UNEs. BellSouth has not complied with its Telecommunications Act obligations to make these conversions, and it has reneged on its earlier commitments.¹

A. BellSouth refuses to convert special access interoffice transport facilities to UNE pricing for Allegiance after representing to the Enforcement Bureau that it would.

On March 3, 2000, Allegiance submitted its first request to the Market Disputes Resolution Division of the Enforcement Bureau to help resolve the matter of BellSouth's refusal to make high capacity interoffice transport facilities available to Allegiance at UNE pricing.² Based on BellSouth's March 20, 2000 response³ and subsequent discussions between the parties, Allegiance withdrew its mediation request. Specifically, (1) BellSouth acknowledged in its response that Allegiance was requesting unbundled DS3 level transport from its switch to a BellSouth Central Office; (2) informed the Commission that because BellSouth had no existing facilities running between those locations, Allegiance would have to purchase an interoffice facilities UNE and a local channel UNE and connect the two in the BellSouth Central Office that served as the serving wire center for Allegiance's switch; (3) assured the Commission (and Allegiance)

¹ Other commenters have encountered BellSouth's refusal to perform these conversions. Comments of Mpower Communications Corp., Network Plus, Inc, and Madison River Communications, Inc., CC Docket No. 01-277, at 18-25 (Oct. 22, 2001).

²Letter from Mary C. Albert, Allegiance to Glenn Reynolds, Market Disputes Resolution Division (Mar. 3, 2000).

³ Letter from William W. Jordan, BellSouth to Frank G. Lamancusa, Market Disputes Resolution Division (Mar. 20, 2000), attached as Exhibit 1 (attachments omitted).

that in the alternative, Allegiance could obtain the interoffice transport facilities it wanted “by ordering a special access circuit then converting it to UNEs as long as it provides significant local traffic over the circuit.”⁴ BellSouth reiterated several times in its response that Allegiance could obtain the transport combinations it needed by ordering the facilities as special access circuits and then converting the special access circuits to UNE pricing.⁵

In reliance on BellSouth’s confirmation that it would convert special access interoffice transport facilities to UNE pricing so long as Allegiance used the transport facilities to carry local exchange traffic, Allegiance accepted BellSouth’s invitation and ordered special access DS3s for the interoffice transport of local exchange traffic in Atlanta with the intention of converting those circuits to UNE pricing. On July 26, 2001, Allegiance submitted its request to BellSouth to convert the DS3 special access circuits to UNE pricing. BellSouth has denied Allegiance’s request and refused to honor its previous commitments.

Initially, BellSouth suggested to Allegiance that it could obtain UNE pricing by converting the special access circuits to its “Non-Switched Combination” (local channel and interoffice combination) product. By letter dated October 3, 2001, BellSouth withdrew that offer on the grounds that none of the special access interoffice transport circuits that Allegiance wanted to convert terminated to an end user (i.e., they are not enhanced extended links (“EELs”). BellSouth contended that a “combination of Local Channel and Interoffice Channel cannot be converted under the current terms of the

⁴ *Id.*, at 2-5.

⁵ *Id.*

Interconnection Agreement between Allegiance and BellSouth because the request does not meet any of the safe harbour rules within the Agreement.” The “safe harbour” rules to which BellSouth refers are the local usage safe harbor rules adopted by the Commission in the *UNE Remand* proceeding for use in determining whether a requesting carrier provides sufficient local exchange service to a particular end user in order to obtain unbundled loop-transport combinations (EELs).⁶ Thus, contrary to what it represented to Allegiance and the Commission in March 2000, BellSouth has now taken the position that Allegiance cannot convert its interoffice transport special access DS3s to UNE pricing *because they are used for interoffice transport and do not terminate to an end user*. On October 10, 2001, BellSouth disavowed all commitments in its March 20, 2000 letter to the Commission and asserted that special access circuits may not be converted to UNEs unless the circuits terminate to an end user. Circuits used for interoffice transport, of course, do not terminate to an end user. Allegiance has been forced to submit a second request to the Enforcement Bureau to help resolve the dispute.⁷

B. BellSouth’s refusal is contrary to law and has a significant financial impact on Allegiance.

There is no basis for BellSouth’s refusal to allow Allegiance to convert its special access DS3 interoffice transport circuits to UNE pricing. The DS3s are used to transport local exchange traffic and BellSouth is required to offer them on an unbundled basis at

⁶ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd 3696 (1999); Supplemental Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-370 (rel. Nov. 24, 1999); Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183, (rel. June 2, 2000).

⁷ Letter from Mary C. Albert, Allegiance to Alexander P. Starr, Market Disputes Resolution Division (Oct. 30, 2001).

TELRIC pricing pursuant to Section 251(c)(3) of the Communications Act. The special access circuits Allegiance seeks to convert to UNEs are currently combined in BellSouth's network and BellSouth may not separate them.

In its March 20, 2000 letter to the Commission, BellSouth correctly stated the law: Commission rule 315(b) prohibits incumbent LECs from separating network elements and allows requesting carriers to convert existing combinations of facilities to UNEs.⁸ Despite these representations, BellSouth has told Allegiance that it must (1) place new orders for UNE interoffice facilities and UNE local channels to replace the existing special access circuits; (2) place disconnect orders for the existing special access circuits; and (3) migrate the traffic from the special access circuits to the UNE transport combination.

Consistent with the Commission's directive to incumbent LECs to implement simple processes to convert special access circuits to unbundled loop-transport (EEL) combinations without delay,⁹ BellSouth cannot be deemed in compliance with the Checklist until it implements similar processes to convert special access circuits to UNE transport combinations without delay. As the Commission stated in the *Supplemental Order*, "the conversion should not require the special access circuit to be disconnected and reconnected because only the billing information or other administrative information associated with the circuit will change when a conversion is requested."¹⁰ BellSouth's requirement that the existing special access circuits be disconnected and replaced with newly ordered UNEs is not only needless and needlessly expensive, it also creates the

⁸ *Id.*, Exhibit B, at 4

⁹ *Supplemental Order*, at ¶ 30.

¹⁰ *Id.*

very real possibility that customers will lose service when the traffic is migrated during the conversion. Such requirements are not consistent with Section 271 compliance. Further, BellSouth's refusal to convert these special access facilities consistent with the law has a significant financial impact on Allegiance.

II. BELLSOUTH ENGAGES IN IMPROPER AND UNLAWFUL WIN BACK ACTIVITY, DEPRIVING ALLEGIANCE OF CHECKLIST ITEMS 1 & 2

Allegiance's ability to compete with BellSouth in Georgia is also hampered by inappropriate win back activity. Allegiance has experienced three kinds of such activity. First, BellSouth is making improper use of customer proprietary network information to retain customers, in violation of the Telecommunications Act, and a Georgia Public Service Commission order issued in response to allegations about such conduct. Second, BellSouth has unilaterally instituted a policy of contacting Allegiance customers one day before BellSouth technicians are dispatched to a customer premise. Third, BellSouth directly contacts Allegiance's customers and prospective customers with false or misleading information about their conversion to Allegiance, or disparaging remarks about Allegiance's services and reputation. The results of these practices are customer confusion, loss of business, and loss of goodwill.

A. BellSouth's wholesale unit unlawfully shares CPNI with its retail unit for customer retention purposes.

Allegiance's experience is that the wholesale unit of BellSouth has been sharing customer proprietary network information ("CPNI") with BellSouth's retail unit to win back customers in violation of the federal Telecommunications Act. Specifically, BellSouth's wholesale unit routinely identifies for the retail unit end users for which a CLEC such as Allegiance has pulled the customer service record ("CSR"). Allegiance

has obtained two lists generated at BellSouth that Allegiance understands to list customer accounts that are in “jeopardy” of being lost by virtue of the fact that a CLEC recently requested the CSR for the account.¹¹ BellSouth’s retail personnel then contact these end users to attempt to dissuade them from changing carriers.¹² BellSouth itself has admitted to the Georgia Commission that it has investigated allegations that its employees have occasionally developed such target lists in other states and that it is possible to create these lists from its systems.¹³ This Commission has expressly forbidden such conduct. In addition, in response to allegations of improper win back activity, the Georgia Commission issued a July 23, 2001 Interim Order directing BellSouth to wait seven days after a customer switches carriers to engage in win back activity. BellSouth has not even complied with that order.¹⁴

¹¹ See Exhibit 2, Declaration of Burton Goldi.

¹² KMC Telecom Inc. reported a similar experience in its Comments:

Following almost immediately the submission by KMC of orders to switch end user customers, BellSouth has dispatched member [sic] of its Winback team. BellSouth’s reaction is simply too instantaneous. KMC customers report that, after not hearing from BellSouth for years, they suddenly receive a call and/or visit right after making the decision to switch to KMC – before the switch is actually made.”

Comments of KMC Telecom, Inc., at 16 (Oct. 22, 2001); see Comments of Mpower Communications Corp., Network Plus, Inc., and Madison River Communications, LLC, at 28 n.69 (“The Commenters have been unable to determine the manner in which BellSouth’s retail unit obtains the names of customers for its direct mail and telemarketing efforts. On numerous occasions, customers that had recently switched to the Commenters have been contacted by BellSouth and offered discounts to return to BellSouth.”).

¹³ BellSouth filed a July 17, 2001 report on its win back activities with Comments in the Georgia Commission’s win back investigation. In that report, BellSouth acknowledged that it had discovered instances of improperly developed CPNI. Exhibit 3, Excerpts of Comments of BellSouth Telecommunications, Inc., *Investigation of BellSouth Telecommunications, Inc.’s “Win Back” Activities*, Docket No. 14232-U, “BellSouth’s Win Back Activities Review, at 3-4, 7-8 (Sept. 7, 2001).

¹⁴ Nearly all of the improper win back activity described in these Reply Comments occurred after all comments on BellSouth’s Section 271 qualifications were due at the Georgia Commission on July 14, 2001 in Docket 6863-U, *Consideration of BellSouth Telecommunications, Inc.’s Entry into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*. Allegiance brought its win back concerns to the Georgia Commission’s attention in September 6, 2001 Comments and in an October 3, 2001 oral

Allegiance has experienced the following incidences in which BellSouth has contacted a prospective Allegiance customer for win back purposes shortly after Allegiance requested the end user's CSR.¹⁵ BellSouth's retail marketing use of the knowledge that a competitor has requested account information from BellSouth's wholesale unit is a textbook violation of Section 222(b).¹⁶ Allegiance has reported all of these instances of conduct to BellSouth along with the identities of the end users involved:

- May 21, 2001 – BellSouth made a written win back offer to its customer after Allegiance obtained the CSR electronically from BellSouth that week in order to analyze the account to make a competitive offer. The BellSouth retail salesperson suggested that by remaining a BellSouth customer the end user would qualify for discounted service as a participant in BellSouth's "Full Circle Program." BellSouth followed up this call with a written proposal offering a discount of as much as 20% over a 36-month term. The end user reported BellSouth's contact to Allegiance, and switched its service to Allegiance.¹⁷
- July 9, 2001 – BellSouth makes a written win back offer to its customer 24 hours after Allegiance obtains CSR.

argument in Docket No. 14232-U, *Investigation of BellSouth Telecommunications "Win back" Activities*. That investigation is still pending before the Georgia Commission.

¹⁵ These incidences are supported by the Declaration of Burton Goldi, Exhibit 2.

¹⁶ Second Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, ¶ 106 (rel. Dec. 23, 1998); Order on Reconsideration and Petitions for Forbearance, *In the Matter of the Telecommunications Act of 1996*, CC Docket Nos. 96-115, 96-149, ¶¶ 77-78 (rel. Sept. 3, 1999), *vacated by U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 120 S. Ct. 2215 (2000). The U.S. Court of Appeals for the Tenth Circuit only vacated the Commission's opt-in approach for carrier use of CPNI. The remainder of the rules, as well as Section 222, remain in effect. Clarification Order and Second Further Notice of Proposed Rulemaking, *In the Matter of Implementation of the Telecommunications Act of 1996*, CC Docket No. 96-115, at ¶ 7 (rel. Sept. 7, 2001).

¹⁷ Subsequently, BellSouth reported to Allegiance and the Georgia Commission that it had investigated the matter and alleged that based on an affidavit obtained from the customer, it determined that the customer had contacted BellSouth on her own to discuss service options. In addition, BellSouth reported that the customer in question left Allegiance for BellSouth after the matter was reported to BellSouth and BellSouth visited the customer and obtained an affidavit. The sequence of events leads Allegiance to question whether BellSouth is using customer identifications made in regulatory proceedings for improper win back purposes as well. Thus far, BellSouth has not reported the results of any further investigation of Allegiance's win back complaints.

- July 23, 2001 – The Georgia Commission issues an Interim Order in Docket No. 14232-U prohibiting BellSouth from engaging in win back activity until seven days after cutover pending an investigation into its business practices. The investigation remains pending. BellSouth continues to use its knowledge of CSRs that have been pulled to engage in win back efforts *prior to* cutover.
- July 30, 2001 – BellSouth makes a written win back offer of a discounted term plan to its customer after Allegiance and two other CLECs obtained the customer's CSR that week. Further, the BellSouth retail salesperson that contacted this customer told the customer that the CLECs it had been speaking to were either in bankruptcy or filing for bankruptcy. Allegiance has not filed for bankruptcy protection and has no reason to contemplate such a filing. The BellSouth salesperson followed up the call with a written offer to the customer to participate in the "Key Customer Program" offering as much as an 18% discount over a 36 month term on regulated charges and a "Hunting Bonus Discount" of up to 75% over a similar term. The end user reported BellSouth's conduct to Allegiance. The customer ultimately did not switch to Allegiance.¹⁸
- September 26, 2001 – BellSouth calls its customer 24 hours after Allegiance obtains the CSR. The BellSouth representative informed the customer that she will lose her directory assistance listing and Yellow Pages ad by switching to Allegiance, and that BST can offer her a discount not to switch carriers.
- October 15, 2001 -- BellSouth contacts a prospective Allegiance customer to erroneously inform them of termination charges on services scheduled to be ported to Allegiance. The BellSouth retail employee contacts the prospective Allegiance customer asserting that the customer would be charged termination penalties upon disconnection. The BellSouth representative would not indicate the amount or provide the information to the customer in writing as requested. Allegiance contacted its BellSouth wholesale account team and discovered that the customer was in fact not on a term plan. Nevertheless, a BellSouth retail employee again called the prospective Allegiance customer to assert that termination charges would apply. As a result of the confusion caused by the BellSouth retail employee, the customer cancelled the order.

¹⁸ Apparently, BellSouth's representatives have made similar misrepresentations to the public about other CLECs. The Georgia Commission opened its win back investigation in response to IDS Long Distance, Inc.'s ("IDS") Complaint and Request for Emergency Relief in Georgia Commission Docket No. 14238-U. IDS' Complaint alleged that BellSouth telemarketers misrepresented to the public that IDS was "going out of business" or "ready to declare bankruptcy." IDS Complaint, § 61. KMC Telecom Inc. states that BellSouth salespersons routinely infer that "'KMC is going bankrupt' like other CLECs." Comments of KMC Telecom Inc. at 17. Such conduct is clearly anticompetitive as well as tortious.

B. BellSouth improperly contacts Allegiance's customers.

Allegiance is also disadvantaged by improper BellSouth communications with Allegiance customers, as well as misinformation. First, BellSouth has unilaterally instituted a policy identified as a "Call Ahead Plan" in which BellSouth contacts Allegiance's customers one day before BellSouth's technician is to be dispatched to install a new line for Allegiance. Such BellSouth contact with Allegiance's customers was not requested by Allegiance and is inconsistent with the carriers' interconnection agreement. Further, it gives BellSouth an opportunity to attempt to win customers back, or to present disparaging, false or misleading information.

C. BellSouth technicians disparage Allegiance's services or misinform Allegiance customers.

Second, when BellSouth technicians are dispatched to Allegiance customer premises for installation or repair, the technicians sometimes disparage Allegiance's services or misinform the customer about the services being installed. In particular, BellSouth technicians routinely tell CLEC customers that they are there to install a DSL line any time a high capacity service is to be provisioned, regardless of what service the customer ordered from the CLEC.¹⁹ Such misinformation causes customers confusion and mistrust. Allegiance has experienced such conduct in the following cases:²⁰

¹⁹ Mpower commented that BellSouth places internal USOC codes on customer CSRs to indicate that a customer may be good candidate for ADSL, even though the customer does not subscribe to that specific service, leading to customer confusion and provisioning delays. Comments of Mpower Communications Corp., Network Plus, Inc., and Madison River Communications, LLC, at 38.

²⁰ Allegiance brought these examples to the attention of BellSouth and Georgia Commission in its win back investigation, and identified the customers to BellSouth. The incidents are supported by the Declaration of Burton Goldi, Exhibit 2. Other commenters raise the same issues. See Comments of Mpower Communications Corp., Network Plus, Inc., and Madison River Communications, LLC, at 27-28 ("BellSouth's technical and customer service personnel frequently disparage CLECs with inflammatory

- September 12, 2001 – A prospective Allegiance customer canceled the contract before the cutover. The BellSouth technician dispatched to the customer premise to repair an existing fax line told the customer that the problem with the fax line was due to an upcoming cutover of three lines to Allegiance.
- September 25, 2001 – A BellSouth technician is dispatched to a new Allegiance customer/former BST customer premise to install a PRI line. The technician says that he is there to install a DSL line and customer refuses the cutover.
- October 2, 2001 – A BellSouth technician is dispatched to an Allegiance customer premise to upgrade the existing service to a T-1. The technician said he was there to install a DSL line. The customer expressed concern that Allegiance did not process his order correctly.

III. CONCLUSION

Under the Telecommunication Act, and this Commission's rules and orders, Allegiance is entitled to rely on the cost savings it would achieve by BellSouth's timely conversion of its special access circuits to UNE pricing. BellSouth's brazen refusal to comply with the law disadvantages its competitors from enjoying the benefits of an open local exchange telecommunications market in Georgia. BellSouth cannot be considered in compliance with Checklist Item 2 while it persists in using its monopoly position to deny competitors their rights.

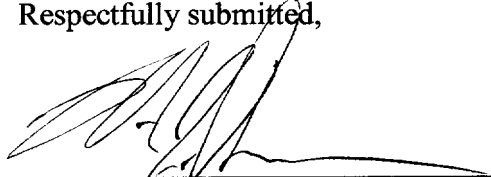
BellSouth's failure to comply with statutory restrictions on the use of CPNI demonstrates that it is not serious about competing fairly in Georgia. Its win back efforts have become increasingly more aggressive, and they begin as soon as BellSouth obtains the privileged information that a customer might be shopping for another provider. BellSouth's campaign of direct contact with Allegiance's customers, disparagement of Allegiance's services and reputation, and dissemination of misinformation constitute more than a pattern. Taken with the similar comments of other carriers, Allegiance's

statements, some of which are completely false, while other statements are, ironically, true only because of the poor service that BellSouth provides to CLECs.”).

experience demonstrates that BellSouth's business practices preclude its compliance with Checklist Items 1 and 2.

For the above reasons, Allegiance respectfully requests that the Commission deny BellSouth's Application for Section 271 authority to provide in-region, interLATA service in Georgia.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Albert', is written over a horizontal line.

Mary C. Albert
Vice President, Regulatory and
Interconnection

Morton J. Posner
Regulatory Counsel
Allegiance Telecom, Inc.
1919 M Street, NW
Suite 420
Washington, DC 20036
(202) 464-1792
(202) 464-0762 (fax)

Counsel for Allegiance Telecom of
Georgia, Inc.

Dated: November 13, 2001

Exhibit 1

BellSouth
Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351

whit.jordan@bellsouth.com

W. W. (Whit) Jordan
Vice President-Federal Regulatory

202 463-4114
Fax 202 463-4198

March 20, 2000

Mr. Frank G. Lamancusa
Deputy Division Chief
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Potential Accelerated Docket Matter – Allegiance Telecom

Dear Mr. Lamancusa:

This responds to your letter to me of March 6, 2000, which forwarded a March 3, 2000, request from Allegiance Telecom that the Commission accept into its Accelerated Docket a complaint against BellSouth.

Allegiance's letter raises two issues. First, it alleges that BellSouth has violated Section 51.319 of the Commission's rules by refusing to provide "point-to-point interoffice transport" that establishes a path from one BellSouth office to a second, then on to an Allegiance office as a "single UNE." Allegiance Letter at 4.¹ Second, Allegiance charges that BellSouth requires that Allegiance collocate as a condition of obtaining access to interoffice transport. Allegiance Letter at 4-5.

The short answer to the first allegation is that BellSouth provides Allegiance with a transport path that links one BellSouth office to another, then on to an Allegiance location. This transport may be ordered as special access then converted to UNEs under the conditions set out in the Commission's *UNE Remand Order*² and the *Supplemental Order*³ issued in that proceeding. Or, it may be ordered as a combination of UNEs under the conditions set out by the Georgia PSC. BellSouth's offerings are in full compliance with its legal obligations. The Commission has consistently rejected requests like Allegiance's that a "single UNE" be created by having incumbent LECs combine multiple separate facilities. An accelerated enforcement proceeding is no place to reverse

¹ Letter from Mary Albert, Allegiancetelecom, inc., to Glenn Reynolds, FCC, dated March 3, 2000 (Allegiance Letter).

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. November 5, 1999)(*UNE Remand Order*).

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999)(*Supplemental Order*).

important Commission policy decisions. This is especially so here, where the entire substance of what Allegiance is requesting is available to it, as detailed below, at UNE prices set by the Georgia PSC. As to Allegiance's second allegation, BellSouth does not require collocation as a condition of obtaining access to interoffice transport.⁴

THE FACTS

Allegiance has submitted various diagrams to illustrate what it is requesting. One of those diagrams is attached as Attachment A. Allegiance has requested unbundled DS3 level transport from BellSouth's Toco Hills office to Allegiance's Marietta Street Point of Presence (POP). Because BellSouth has no facilities that run directly between Allegiance's POP and the Toco Hills office, a connection between those locations can only be established through a third office. BellSouth's Courtland Street office is the serving wire center (SWC) for Allegiance's Marietta Street POP, meaning that there are facilities connecting these two locations. Thus, a connection through BellSouth's network between Toco Hills and Allegiance's Marietta Street POP can be established through the Courtland Street office.⁵

Thus, as illustrated on Allegiance's diagram, establishing this connection requires two pieces of unbundled transport. The diagram labels the link between the two BellSouth offices involved "unbundled transport – interoffice facilities." The diagram labels the link between the BellSouth SWC and Allegiance's POP "unbundled transport – local channel." This terminology – interoffice facilities and local channel – reflects Commission, Georgia PSC and industry recognition that the two are different. The Commission has long recognized the distinction between local channels and interoffice facilities in its access regulations and has endorsed different pricing for the two elements.⁶

Both the Commission and the Georgia PSC have recognized a distinction between the two in proceedings concerning UNEs under the Telecommunications Act. Thus, in its *UNE Remand Order*, the Commission separately analyzed facilities connecting incumbent LEC offices with POPs and interoffice facilities.⁷ The Georgia PSC in its *Cost Order* (and every other PSC in BellSouth's region) has also recognized this

⁴ Allegiance sprinkles its letter with objections to BellSouth's policy of requiring that a requesting carrier's contract cover the facilities and services that it orders. Allegiance does not charge that this commonsense policy violates the Act. In the interest of brevity, BellSouth will omit a review of the contract negotiation process with Allegiance except to point out that it has promptly provided Allegiance with various amendments to its contract, including an amendment (Attachment B to this letter) that would allow Allegiance to order combinations of UNEs and to convert special access to UNEs.

⁵ Allegiance does not need to use BellSouth facilities to establish these connections. There are three or more independent providers of competitive fiber-based transport in each of these BellSouth offices that could link Allegiance's collocation space to its POP.

⁶ See 47 C.F.R. Part 69.

⁷ *UNE Remand Order* at ¶ 347-48. The Commission concluded that there was substantially more competition on the routes between POPs and incumbent LEC SWCs than on interoffice routes between incumbent LEC offices, demonstrating that the market has also recognized a difference between the two sorts of routes.

distinction by establishing different prices for the individual UNEs.⁸ The Georgia PSC's *Combination Order*⁹ also recognizes that interoffice facilities and local channels are not one UNE but are separate elements that may be combined to provide service.

The two facilities that Allegiance seeks (the interoffice facilities between the Toco Hills office and the Courtland Street office and the local channel connecting Courtland Street and Allegiance's POP) are two separate, independent facilities in BellSouth's network. They are not connected at the Courtland Street office. No traffic can be routed over them without engineering work to establish a connection between them. Allegiance's request for transport, then, is not a simple UNE request, rather, it is a request that BellSouth undertake affirmative engineering work to establish a connection between the two facilities.

As part of the contract negotiation process, BellSouth has offered all legally required transport options to allow Allegiance to accomplish its goal. First, BellSouth has offered to deliver the two facilities to Allegiance's collocation space at Courtland Street so that Allegiance could establish the necessary connection.¹⁰ Following up on the Georgia PSC's *Combination Order* and the Commission's *UNE Remand Order*, BellSouth provided Allegiance a contract amendment that allows Allegiance to order combinations of interoffice facilities, including combinations that require engineering work by BellSouth, and to convert special access circuits to UNEs. Allegiance has not yet replied to BellSouth's offer. BellSouth's proposed contract amendment is Attachment B to this letter.

LEGAL REQUIREMENTS

The Commission's rules establish that interoffice transport is an unbundled network element. Those rules define dedicated interoffice transport as including transport between incumbent LEC offices and switches or offices of requesting carriers. 47 C.F.R. § 319(d). Interoffice facilities and local channels both fall within the unbundled dedicated transport element.

However, the fact that both interoffice facilities and local channels fall within that definition in no way suggests that they somehow become fused into a single facility. As set out above, the Commission, the Georgia PSC and the industry have long recognized

⁸ *Review of Cost Studies, Methodologies and Cost-Based Rates for Interconnection and Unbundling of BellSouth telecommunications Services*, Order Establishing Cost-Based Rates, Georgia PSC Dkt. No. 7061-U (rel. Dec. 16, 1997)(*Cost Order*) at Appendix A, p. 3. The network provisioning of interoffice facilities differs from the provisioning of local channels. For example, local channels generally require fewer electronics than interoffice facilities.

⁹ *Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements*, Order, Georgia PSC Dkt. No. 10692-U (rel. Feb. 1, 2000)(*Combination Order*) at 21.

¹⁰ Allegiance is not limited to combining elements only in a collocation space. Allegiance, could, for example, take advantage of BellSouth's offer of an "assembly point" option for combining elements. This option creates a means to combine elements without collocation. See Statement of Generally Available Terms and Conditions For Interconnection, Unbundling and Resale Provided By BellSouth Telecommunications, Inc. In The State of Georgia, Section II.F.1, filed with the Georgia PSC March 2, 2000.

that the two are separate. And, the two facilities sought by Allegiance are, in fact, separate and unconnected in BellSouth's network. The Commission has uniformly refused to combine separate facilities or elements into a single UNE. Thus, in a directly applicable precedent, the Commission refused requests to create a transport ring UNE out of a combination of separate point-to-point interoffice facilities and/or local channels. *UNE Remand Order* at ¶ 324. Similarly, the Commission has explicitly refused to create a single "EEL" UNE out of separate facilities. *UNE Remand Order* at ¶ 478.

The Commission has refused to create single UNEs out of separate facilities because, among other reasons, the Commission's rules do not require BellSouth or other incumbent LECs to undertake the affirmative engineering work necessary to combine separate UNE facilities at cost-based prices.¹¹ Thus, 47 C.F.R. 315(b) prohibits incumbent LECs from separating network elements, but it in no way requires affirmative action to combine elements. The Supreme Court upheld that rule precisely because it prohibited only separating network elements.¹²

The Commission's Rule 315(b) does mean that requesting carriers may convert existing combinations of facilities to UNEs. Thus, where, for example, a circuit exists between BellSouth's Toco Hills office and Allegiance's Marietta Street POP, Allegiance may seek to convert that existing circuit to UNEs. (Allegiance may obtain such a circuit under BellSouth's access tariffs.) Under the Commission's *UNE Remand Order*, BellSouth is obliged to convert that circuit to UNEs if Allegiance uses that circuit to provide a significant amount of local exchange service. *UNE Remand Order* at ¶ 484-89; *Supplemental Order* at ¶ 4-7.

Finally, the Georgia PSC has ordered BellSouth to provide combinations of UNEs. The Georgia PSC's *Combination Order* requires BellSouth to provide currently combined UNEs as well as UNEs that are "ordinarily and typically combined" by BellSouth in its network. *Georgia Combination Order* at 9-12. This requires BellSouth to combine, for example, interoffice facilities and local channels at the request of a CLEC.

ARGUMENT

Allegiance's letter does not demonstrate any violation of the Telecommunications Act or any FCC rule. As a substantive matter, Allegiance's complaint is not appropriate for the Accelerated Docket, or any docket. As a procedural matter, it should be before the Georgia PSC because it implicates the Georgia PSC's *Combination Order* and its *Cost Order* establishing separate pricing for interoffice facilities and local channel facilities. As a business matter, Allegiance can obtain what it wants throughout BellSouth's region simply by negotiating an arrangement under which BellSouth will

¹¹ *UNE Remand Order* at ¶¶ 478-82.

¹² *AT&T v. Iowa Utilities Board*, 721 S.Ct. 721 (1999). The Commission's rules that did require incumbent LECs to affirmatively combine network elements were overturned by the Eighth Circuit. Whether those rules could possibly be reinstated is currently under that court's consideration. See *UNE Remand Order* at ¶ 481.

connect UNEs or by ordering a special access circuit then converting it to UNEs as long as it provides significant local traffic over the circuit. In Georgia, Allegiance can also directly order a combination of local channel and interoffice facility UNEs. .

When Allegiance orders two UNE facilities -- an interoffice facility and a local channel -- BellSouth is under no federal obligation to combine those facilities to create a circuit for Allegiance. (BellSouth has negotiated agreements with carriers to combine facilities, and is willing to negotiate a similar arrangement with Allegiance.) Thus, under FCC rules, it is perfectly appropriate for BellSouth to refuse to combine those two elements. The fact that they may both fall within the definition of unbundled transport does not turn the two facilities into one. Allegiance's argument to that effect attempts to elevate a definitional grouping over the law and network reality. If applied consistently, Allegiance's definitional argument would create a single transport network out of thousands and thousands of separate BellSouth transport facilities throughout its region, and turn millions of separate loops into a single giant UNE "Loop."

The two transport facilities at issue here are separate, independent, unconnected facilities in BellSouth's network. Attempting to turn them into one through a definitional trick would violate the Eighth Circuit's reversal of the Commission rules that attempted to require such affirmative combining of elements. In a directly applicable decision, the Commission refused requests to create a transport ring UNE out of a combination of separate point-to-point interoffice facilities and/or local channels. *UNE Remand Order* at ¶ 324. This decision alone compels rejection of Allegiance's request that a single transport UNE be created from multiple, separate point-to-point transport facilities. Further, the Commission's *UNE Remand Order* also clearly and explicitly rejected exactly the approach urged by Allegiance here while the Eighth Circuit considers whether to reinstate Commission Rules 315(c)-(f). *UNE Remand Order* at ¶¶ 478-82.¹³

Allegiance may legally obtain combinations of UNEs under the Act in two ways. BellSouth is in full legal compliance in providing Allegiance both these options. First, the Commission's prohibition on separating combined UNEs does allow CLECs to convert existing combinations of facilities to UNEs and thus to benefit from TELRIC pricing. As discussed in the *UNE Remand Order* and *Supplemental Order*, Allegiance can convert a special access circuit connecting BellSouth's Toco Hills office to its Marietta Street office to UNEs if it provides significant local service over the facilities. Under Rule 315(b), BellSouth may not separate this existing combination. On February 28, 2000, BellSouth sent Allegiance a proposed amendment to its contract that provides for converting special access circuits to UNEs. Attachment B at § 1.4. Allegiance has not yet responded to this offer.

¹³ To the extent Allegiance's complaint is that local channels and interoffice facilities have different prices, those prices reflect the considered judgment of the Georgia PSC that the facilities have different cost characteristics and that the TELRIC prices of these facilities should reflect those differences. The Georgia PSC, like all the other PSCs in BellSouth's region, regularly makes pricing distinctions between UNEs that fall under the same UNE definitional category. Thus, the Georgia PSC has set different prices for 2-wire, 4-wire, ADSL and DS1 loops.

In addition, the Georgia PSC's *Combination Order* allows Allegiance to order UNE combinations and BellSouth is in full compliance with that order. The *Combination Order* sets out several specific combinations and establishes TELRIC prices for those combinations. The DS3 level combination sought by Allegiance is not specifically described. However, the *Combination Order* requires BellSouth to provide any combinations that are "ordinarily and typically combined" within BellSouth's network. The DS3 level combination sought by Allegiance is ordinarily and typically combined within BellSouth's network, and, in Georgia, BellSouth will do the combining.¹⁴ BellSouth sent Allegiance a proposed contract amendment that provides for UNE combinations pursuant to the *Combination Order*. Attachment B at 1.2.3. Allegiance has not yet responded to this offer.

Finally, BellSouth has no requirement that Allegiance or any other carrier collocate as a prerequisite to ordering transport UNEs.

THIS MATTER IS NOT APPROPRIATE FOR THE ACCELERATED
DOCKET

The issues raised by Allegiance are not suited to an enforcement proceeding, let alone the Accelerated Docket. Allegiance's letter seeks to use the Accelerated Docket to change a considered Commission decision reached in its *UNE Remand Order* not to create single UNEs out of separate facilities. Allegiance's request would reverse this decision and attempt to preempt the Eighth Circuit. Major policy reversals do not belong in accelerated enforcement proceedings.

Section 1.730 of the Commission's rules lists particular factors for Commission staff to consider in identifying matters for the Accelerated Docket. Consideration of these factors shows that this matter does not belong here. First, the parties have not exhausted "reasonable opportunities for settlement." Section 1.730(1). In fact, Allegiance has not yet responded to BellSouth's February 28, 2000, offer of contract language covering the provision of UNE combinations and the conversion of special access circuits to UNEs. Second, Allegiance is proposing that staff undertake to change major policy Commission decisions in this enforcement proceeding. Thus, Allegiance's request fails two additional factors. Section 1.730(2) and (3). Neither do Allegiance's claims state a violation of any statute or Commission rule or order. Section 1.730(4).

CONCLUSION

Allegiance's letter does not demonstrate any violation by BellSouth of any of its legal obligations. Allegiance may combine BellSouth UNEs itself, or it may obtain UNE combinations pursuant to Commission and Georgia PSC orders. BellSouth can and will provide UNE combinations pursuant to those orders and has taken the affirmative step of

¹⁴ The Georgia PSC ordered that the price for combinations not specifically priced in the *Combination Order* would be the sum of the UNE prices involved pending a further cost proceedings. The sum of the UNE prices would be trued-up based on the outcome of the further proceedings. *Combination Order* at 21-22.


Mr. Frank G. Lamancusa

03/20/00

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providing Allegiance with contractual language that provides for UNE combinations. Allegiance, BellSouth and Commission staff would best be served by a continuation of the negotiation process and an Allegiance response to BellSouth's proposed contract language.

Yours truly,

A handwritten signature in black ink, appearing to read "WW Jordan", written in a cursive style.

William W. Jordan
Vice-President – Federal Regulatory

cc: Glenn Reynolds
Mary C. Albert

Attachments

Exhibit 2

DECLARATION OF BURTON GOLDI

I, Burton Goldi, being of legal age, depose and say as follows:

1. My name is Burton Goldi. I am the Eastern Regional Vice President, Sales of Allegiance Telecom, Inc., parent company of Allegiance Telecom of Georgia, Inc. My business address is 3500 Piedmont Road, Suite 340, Atlanta, Georgia 30305.
2. I am responsible for all Allegiance sales activity in Atlanta. In that capacity, I am aware of instances of anticompetitive BellSouth win back activity reported to me from the sales representatives that I supervise.
3. Allegiance has obtained two lists generated at BellSouth that Allegiance understands to list customer accounts that are in "jeopardy" of being lost by virtue of the fact that a competitive local exchange carrier recently requested the customer service record for the account. BellSouth's retail personnel then contact these end users to attempt to dissuade them from changing carriers.
4. I have reviewed the foregoing Comments of Allegiance Telecom of Georgia, Inc. in Federal Communications Commission Docket No. 01-277. The statements made regarding the instances in which BellSouth retail personnel engaged in improper win back activity and in improper contacts with Allegiance customers are true to the best of my information, knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of November, 2001.



Burton Goldi

Exhibit 3

BellSouth Telecommunications, Inc.
Legal Department
125 Perimeter Center West
Suite 376
Atlanta, GA 30346

meredith.mays@bellsouth.com

Meredith E. Mays
Attorney

770 391 4254
Fax 770 391 2812

September 7, 2001

DELIVERED BY HAND

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334-5701

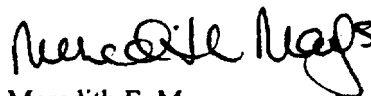
Re: *Investigation of BellSouth Telecommunications, Inc.'s "Win Back" Activities;*
Docket No. 14232-U

Dear Mr. McAlister:

Enclosed please find the original and eighteen (18) copies, as well as an electronic version, of BellSouth Telecommunications, Inc.'s Comments in the above-referenced docket. I would appreciate your filing same and returning the three (3) extra copies stamped "filed" in the enclosed self-addressed and stamped envelopes.

Thank you for your assistance in this regard.

Yours very truly,



Meredith E. Mays

MEM:nvd
Enclosures

cc: Parties of Record (via electronic mail)

409958/409179

BELLSOUTH'S WIN BACK ACTIVITIES REVIEW

JULY 17, 2001

I. BACKGROUND AND INTRODUCTION

During the early part of 2001, BellSouth received complaints from competitive carriers ("CLECs") addressing certain aspects of BellSouth's win back and retention activities. These complaints and activities can be placed in two basic categories – alleged disparagement of CLECs; and alleged misuse of wholesale information. In addition, BellSouth had received reports from internal sources of isolated activities related to win back and retention activities.

Following receipt of these complaints and reports, BellSouth Management took three related steps: (1) all outbound (telemarketing and direct mail) win back activities were temporarily suspended; (2) a review of these programs (the "Review")¹ was commenced to ensure that BellSouth policies and guidelines were being followed; and (3) a formal process was adopted for identifying and handling any subsequent CLEC complaints related to BellSouth's marketing and sales practices².

The Review revealed (a) no evidence of systematic wrongdoing; (b) no evidence of improper systems links; (c) that proper policies regarding use of information found in BellSouth's systems and regarding sales and marketing practices were clearly established; and (d) that these policies were generally understood in the field. The Review, however, showed isolated instances of disparagement of competitors had occurred in BellSouth's authorized service representative channel and one instance of use of wholesale information that did not comply with BellSouth policy.

Following the Review, BellSouth adopted a plan to further address win back activities. This Report summarizes the complaints, the factual findings resulting from the Review, and the plan that was adopted.

¹ The Review was conducted under the direction and guidance of the Legal Department. No legal advice that was sought from or provided by the Legal Department is discussed in this Report.

² The process adopted designates an individual within the legal department to be responsible for the receipt of all CLEC complaints regarding the win back and retention marketing and sales practices and the investigation of said complaints.

II. ITEMS REVIEWED

A. The CLEC Allegations

BellSouth received the following complaints from CLECs with sufficiently detailed allegations to enable the complaints to be addressed during the Review.³

1. CLEC A. During interaction with BellSouth personnel in late April, 2001, CLEC A indicated that their customers had reported having received calls from BellSouth representatives involved in BellSouth's customer win back efforts. It was reported to CLEC A that the BellSouth representatives stated that CLEC A was bankrupt, was going out of business, and would not be able to serve its customers. To facilitate BellSouth's review, CLEC A provided information concerning customers and timeframes for the calls.

2. CLEC B. In early 2001, CLEC B wrote BellSouth and alleged the existence of inappropriate links or triggers between BellSouth's retail and wholesale operations. CLEC B alleged that within a short period of time after having accessed a customer service record or having executed a letter of agency, BellSouth personnel launched retention efforts with respect to the customer.

3. CLEC C. In May, 2001, CLEC C filed a complaint with the Florida Public Service Commission alleging that BellSouth telemarketers had falsely stated that CLEC C was going out of business or was ready to declare bankruptcy or was otherwise unable to provide quality service. The complaint included nine sworn affidavits from CLEC C customers providing the factual basis for the complaint.

B. Self-Reported Events

1. Birmingham SBTC. BellSouth's Compliance personnel became aware of an incident of the use of wholesale information in the Birmingham Small Business Telecommunications Center that did not comply with BellSouth policy. In that instance, it was reported that a Small Business service representative had compiled a win back call list consisting of CLEC customers through access to BellSouth's BOCRIS system.

2. North Carolina Account Personnel. In April 2001, the BellSouth Legal Department was informed that a BellSouth Business account executive in North Carolina had asked questions about the propriety of developing a win back target list using information contained in BellSouth IT systems. This issue was raised prior to development of any list.

³ BellSouth also received other complaints or read of complaints in the press. BellSouth requested information necessary to address these complaints during the Review, but to date, BellSouth has received no such information.

3. Louisiana Account Personnel. In April 2001, the BellSouth Legal Department was informed that a list of a CLEC's customers was being used by BellSouth Business account executives in the south Louisiana area. The origin of the list was unknown at the time of the report.

set forth in the customer affidavit, it was determined that the specific sales representative had been terminated by the ASR for reasons unrelated to the CLEC C claim.

B. Self-Reported Claims

1. Birmingham SBTC. BellSouth has developed a process for creating target lists for win back activities that comply with all applicable legal and regulatory requirements. In short, BellSouth identifies all customers that have completely or partially disconnected service and deletes from that list those non-competitive disconnects that were processed by the retail organization. BellSouth then assumes that the remaining disconnects are the result of competitive loss. Lists generated pursuant to this process are the only authorized sources for engaging in win back activities.

BellSouth's SBTCs are the primary inbound customer service channel – repair, billing and service enhancement – for the mass-market segment of BellSouth's Small Business organization. SBTC personnel also redirect misdirected service calls from former BellSouth customers who are now served by CLECs to the appropriate CLEC. Information necessary to provide this service is contained in a BellSouth system to which SBTC service representatives have appropriate access.

During the infrequent non-peak hours, SBTC personnel are, at times, also permitted to engage in limited outbound sales efforts. In late April 2001, BellSouth's Compliance organization was informed that a specific BellSouth employee in the Birmingham SBTC had engaged in outbound win back efforts using a list not developed pursuant to the approved process.

The employee allegedly involved in this activity was interviewed during this Review, as well as supervisory employees at the center and it was determined that this employee had created a list rather than using the lists that had been created pursuant to the process described above. This list had been used to make a limited number of calls to a CLEC's⁶ customers during a very limited period of time prior to discovery and action by BellSouth's Compliance organization.

2. Louisiana Account Executive. In late April 2001, the BellSouth Legal Department was informed that a list of a CLEC's customers was being used by BellSouth Business account executives in south Louisiana. The origin of the list was unknown at the time of the report.

During the review Team all employees with possible knowledge of the list were interviewed and it was determined that such a list did exist. The list had

⁶ The CLEC had previously announced that it had declared bankruptcy and had provided notice to its customers that it was exiting the business.

been provided to a BellSouth Business account executive by a Qwest Communications employee and contained no proprietary or confidential legend. In the recent past, the account executive and the Qwest employee had become acquainted while employed by a third party CLEC. It was confirmed that this list had not been generated by use of wholesale information contained in BellSouth IT systems.

3. North Carolina Account Personnel In late April 2001, the BellSouth Legal Department was informed that a recently transferred BellSouth Business account executive had questioned his supervisor about the propriety of developing ad hoc win back lists. The account personnel was interviewed during the Review and it was determined that no such list had actually been created. The employee had, however, engaged in inappropriate "systems surfing."⁷

⁷ "System surfing" means accessing BellSouth's IT systems and databases without a legitimate business purpose to determine what information is obtainable through the systems and databases.

CERTIFICATE OF SERVICE

I, Morton J. Posner, hereby certify that I served a copy of the foregoing Reply Comments of Allegiance Telecom of Georgia, Inc. on the following by U.S. mail this 13th day of November, 2001.

James Davis-Smith
Telecommunications Task Force
Antitrust Division
U.S. Department of Justice
1401 H Street, NW, Suite 8000
Washington, DC 20530

Jason Oxman
Assistant General Counsel
Covad Communications Company
600 14 th Street, N.W., Suite 750
Washington DC 20005

Debbie Goldman
George Kohl
Communications Workers of America
501 Third Street, NW
Washington, DC 20001

Albert H. Kramer
Jacob S. Farber
Robert Felger
Gregory Kwan
Dickstein Shapiro Morin & Oshinsky
LLP
2101 L Street, NW
Washington, DC 20037

Gregory C. Lawhon
Senior Vice President & General
Counsel
Rose Mulvany Henry
Birch Telecom of the South, Inc.
2020 Baltimore Ave.
Kansas City, MO 64108

John D. Seiver
Christopher W. Savage
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006

Aliceann Wohlbruck
Executive Director
National Association of Development
Organizations
400 North Capitol Street, NW
Suite 390
Washington, DC 20001

Julia O. Strow
Vice President Regulatory & Legislative
Affairs
Brian Musselwhite
Director - Regulatory & Legislative
Affairs
Cbeyond Communications, LLC
320 Interstate Parkway, SE
Suite 300
Atlanta, GA 30339

Marc A. Goldman
Jenner & Block, LLC
601 13th Street, NW
Suite 1200
Washington, DC 20005

Robert Lopardo
Keith L. Seat
Worldcom, Inc.
1133 19th Street, NW
Washington, DC 20036

Paul Schroeder
Vice President, Governmental Relations
American Foundation for the Blind
820 First Street, NW
Suite 400
Washington, DC 20002

George Herrera
President and Chief Executive Officer
2175 K Street NW
Suite 100
Washington, DC 20037

Rick Dovalina
LULAC National President
League of United Latin American
Citizens
2000 L Street, NW
Suite 610
Washington, DC 20036

Leroy Watson
Legislative Director
National Grange of the Order of Patrons
of Husbandry
1616 H Street, NW
Washington, DC 20006

Daniel W. Merenda
President and CEO
National Association of Partners in
Education
901 North Pitt Street, Suite 320
Alexandria, VA 22314

Genevieve Morelli
Andrew M. Klein
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Washington, D.C. 20036

Association of Communications
Enterprises
Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006

Larry E. Robbins
Wyrick Robbins Yates and Ponton, LLP
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607

Linda F. Golodner
President
National Consumers League
1701 K Street, N.W., Suite 1201
Washington, D.C. 20006

Matthew D. Bennett
Policy Director
Alliance for Public Technology
919 18th Street, NW, Suite 900
Washington, D.C. 20036

Milton J. Little, Jr.,
Executive Vice President & COO
National Urban League
120 Wall Street
New York, NY 10005

Rev. Charles L. White Jr.
Regional Director
The Southeast Region NAACP
970 Martin Luther King Jr, Drive, SW
Atlanta, Georgia 30314

Hilary O. Shelton, Director
NAACP - Washington Bureau
1025 Vermont Ave., NW
Suite 1120
Washington, DC 20005

Jake E. Jennings
Vice President, Regulatory Affairs
NewSouth Communications Corp.
Two Main Street
Greenville, SC 29601

John Buckstead
Executive Director
National Association of Community
Action Agencies
1100 17th Street, N.W.
Suite 500
Washington, DC 20036

Jordan Clark
President
United Homeowners Association
1201 Pennsylvania Avenue, NW Suite
300
Washington, DC 20003

Henry C. Campen, Jr., Esq.
John A. Doyle, Jr. Esq.
Parker, Poe, Adams & Bernstein, L.L.P.
150 Fayetteville Street Mall, Suite 1400
Raleigh, NC 27602

Mark C. Rosenblum
Lawrence J. Lafaro
David Eppsteiner
Richard Rocchini
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920

William R. Holman, CHE
President & Chief Executive Officer
General Health System
5757 Corporate Blvd
Suite 200
Baton Rouge, LA 70808

David W. Carpenter
David L. Lawson
Merinda Wilson
Alan C. Geolot
Peter D. Keisler
James P. Young
Richard E. Young
Christopher T. Shenk
SIDLEY AUSTIN BROWN & WOOD
1501 K Street, NW
Washington, D.C. 20005

Sue D. Blumenfeld
WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036

Richard Juhnke
Sprint Corporation
401 9th Street, NW
Suite 400
Washington, DC 20004

Maritza Soto Keen
Executive Director
Latin American Association
2665 Buford Highway
Atlanta, GA 30324

Bobby Simpson
Mayor - President
City of Baton Rouge
222 St. Louis Street
PO Box 1471
Baton Rouge, LA 70821

Anne Werner, President and Executive
Director
United Seniors Health Council
409 Third Street, SW
Suite 200
Washington, DC 20024

Harry C. Alford
President/CEO
National Black Chamber of Commerce
1350 Connecticut Ave., NW
Suite 825
Washington, DC 20036

James J. Harralson
Fred J. McCallum, Jr.
Jim O. Llewellyn
Lisa S. Foshee
4300 BellSouth Center
675 West Peachtree Street
Atlanta, GA 30375

Bennett L. Ross
125 Perimeter Center West
Room 376
Atlanta, GA 30346

Victoria K. McHenry
365 Canal Street
Suite 3060
New Orleans, LA 70130

Jonathan B. Banks
1133 21st Street, NW
Room 900
Washington, DC 20036

Michael K. Kellogg
Sean A. Lev
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
1615 M Street, NW
Suite 400
Washington, DC 20036

Jeffrey S. Linder
Suzanne Yelen
Wiley Rein & Felding, LLP
1776 K Street, NW
Washington, DC 20006

Harris R. Anthony
400 Perimeter Center Terrace
Suite 350
Atlanta, GA 30346

Russell I. Zuckerman
Senior Vice President and General
Counsel
Richard E. Heatter
Vice President, Legal Affairs
Francis D.R. Coleman
Vice President, Regulatory Affairs
Mpower Communications Group
175 Sully's Trail - Suite 300
Pittsford, NY 14534

Lisa Korner Butler
Vice President - Regulatory and Industry
Relations
Network Plus, Inc.
41 Pacella Park Drive
Randolph, MA 02368

Eric J. Branfman
Richard M. Rindler
Patrick J. Donovan
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007

Trey Judy
Director - Regulatory Affairs
Madison River Communications, LLC
PO Box 430
103 South Fifth Street
Mebane, NC 27302

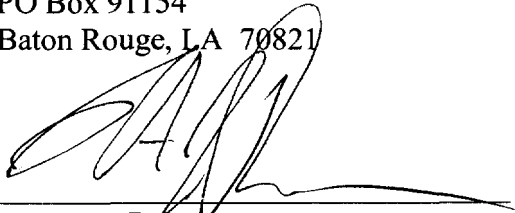
John Sumpter
Vice President, Regulatory
PacWest Telecom, Inc.
4210 Coronado Avenue
Stockton, CA 95204

Sumner N. Smith
Senior Corporate Counsel
US LEC Corp.
6801 Morrison Boulevard
Charlotte, NC 28211

Leon Bowles
Division of the Telecommunications
Unit
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

Robert W. Baker
Vice President and General Counsel
El Paso Networks, LLC
1001 Louisiana Street
25th Floor
Houston, TX 77002

Arnold Chauviere
Utilities Division Head
Louisiana Public Service Commission
One American Place
Suite 1630
PO Box 91154
Baton Rouge, LA 70821



Morton J. Posner